(1)

Supreme Court, U.S.
FILED
26 JUN 16 1994
OFFICE OF THE CLERK

No: 94-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1994

Juan Bautista Rivera,

Petitioner

vs.

The Appellate Department of the

Superior Court of California,

County of Solano,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION ONE

PETITION FOR CERTIORARI

Pro se, Petitioner
Juan Bautista Rivera
1133 Beelard Drive
Vacaville, California 95687
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93 pp

QUESTIONS PRESENTED

Whether, Penal Code Section 26 Three, is available to petitioner on his act of reducing his speed from 45 MPH to 35 MPH on Elmira Road; Whether those facts and the fact from the extraordinary circumstances, raises an exculpatory issue and grounds for demurrer to the Complaint;

Whether the Commissioner erred in declining to receive defendant's demurrer papers at his arraignment day March 2, 1993;

Whether prosecution's failure exercise due diligent or to make any opposition to the interposed demurrer motion under California Rule of Court 317(a), California Stats 1986, Ch. 246, Section 1, Solano Local Rule 4.14(a) and under Code of Civil Procedure, Section 1005, raises a default proceeding upon

the prosecution, thus requiring an independent motion for relief from default under Code of Civil Procedure Section, 473, prior to trial;

Does California Vehicle Code Section 627(a)(b)(1), provides that the prevailing speed shall be as determined by the traffic and engeenering measurements; whether under due process of law, said traffic engeenering measurements are admissible in to evidences as the prevailing speed on a charge off having violated the speed limit under Vehicle Code Section 22350, United States Constitution Amendments V and XIV;

Whether the due process and the equal protection clause give right to the defendant and petitioner to have witnesses testify on his behalf to support his exculpatory circumstances at issue, and grounds for his demurrer;

Whether the State has illegal obtained evidence to secure a conviction of the defendant, under Vehicle Code Section 40802(b)(1)(2)(3), Speed trap laws, Sections 40800-40808;

Having taken an oath to testify, declare, depose and certify truthfully before the Municipal Court of the State of California, in and for the County of Solano, a competent tribunal, officer and person did wilfully, unlawfully, feloniously and contrary to such oath, state as true a material matter which the witness knew to be false, does it contrive defendant due process, United States Constitution Amendment V and XIV;

Whether as resort of the extraordinary and exculpatory defense, People v. Morris (1987) 191 Cal. App. 3d. Supp. 8, requires a holding that ordinary person has inalienable rights

to act with due care and due diligence, in the protection of their property, California Constitution Art. I, Section I;

PARTIES TO THE PROSEDINGS

In addition to petitioner, Juan Bautista Rivera, is the State of California, Real Parties in Interest, Inclusive: The Supreme Court of the State of California, Hon. Malcon M. Lucas; The Court of Appeal, First Appellate District, Division 1, Hon. Strankman PJ; The Appellate Department of the Superior Court in and for the County of Solano, Hon. R. Michael Smith, Hon. Dennis Bunting, Hon. Richard M. Harris; California Municipal Court in and for the County of Solano, Hon. George Brewer, Hon. Eric R. Uldall; California State Witness, Vacaville Police Officer (Kevin J. O'Conell, Serial # 245).

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REFERENSE TO OPINION BELOW

The Municipal Court in and for the County of Solano (MCCS) found petitioner guilty on March 29, 1993, of violation of California Vehicle Code Section 22350 (MCSC. RT. Pg. 51-52, App. Pg. 1, 2, 3, 4); the Opinion of the Appellate Department of the Superior Court, was filed on November 30, 1993 (ADSCCS. App. Pg. 5, 6, 7, 8); Petiton for rehearing was filed on December 10, 1993 (App. Pg. 9-19); Petition for rehearing was denied on December 20, 1993 (App. Pg. 20-21); the Decision of the Court of Appeal of the State of California First Appellate District Division One, was filed January 12, 1994 (CAFADD1. App. Pg. 22); No rehearing was sought, California Rule of Court, 24; the Decision of the Supreme Court of the State of California was

filed March 23, 1994 (SCSC. App. Pg. 23); no rehearing was sought, California Rule of Court, Rule 24.

JURISDICTION

On January 31, 1994, upon consideration of the Earthquake Rule, a Petition for Review was filed with the State Supreme Court, and denied on March 23, 1994. See, Reference to opinion below, Pg. 1;

Appearing that the State Court has so far departed from the accepted and usual course of judicial proceedings, thus vandicating defendant due process rights to present vital and exculpatory evidence to his defense, dinying defendant the right to have witnesses in his own behalf and prosecution fabricating material documentary evidence against the defendant, warrant the exercise of the Court's discretionary de novo review

powers for the accepted and usual course of principals of law, herein presented, Rule 10(a).

Petitioner has exhausted the appellate procedure within the State, as the Court will find herein under 28 USC 1257(a), 2102;

STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments
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California Constitution Art. I,
Section I ..... App. Pg. 51
Section 28(d) ..... App. Pg. 53
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STATEMENT OF THE CASE

On January 16, 1993, after having requested public assistance, petitioner proceeded seeking the protection of his family property, upon been informed of it being in imminent peril. The public assistance requested had left the scene without entering, leaving two individuals who had no authority to enter the property in the event of greater danger as the case was (App. Pg. 24-30).

Petitioner with due care at or about 1:30 a.m., brought him to Elmira Road a County Road that merits the criteria of "Speed Trap" California Vehicle Code Section 627(a)(b(1), 40802(b)(1)(2)(3).

The Court takes the position that this evidence is irrelevant and that the speed trap laws have been abrogated by proposition 8, Cal. Const. Art. I, Sec. 28(d). This error was brought to the attention of the court, Rt. Pg. 49, Vehicle Code Sec. 40808, App. Pg. 1;

Thus, when the facts stated under the above section are present as in this matter, the Court of the State of California loses its jurisdiction over the matter Vehicle Code Section 40805.

On petitioner's arraignment day, March 2, 1993, the Commissioner of the Municipal Court declined to receive the demurrer pleading (App. Pg. 24-33). Penal Code Section 1003-1006.

For the reasons stated above, petitioner filed said pleading on March 3, 1993, with hearing set for March 17, 1993. The Court on March 17, 1993, declined to hear the demurrer motion, although respondents were in default by

having failed to make any opposition to the demurrer, under California Rule of Court, Rule 317(a).

The Court here was persistent in prosecuting petitioner. Thus on March 17, over the default matter, the Court in excess of its jurisdiction transferred the case to another room for trial on March 29, 1993.

On March 29, 1993, petitioner was denied his constitutional rights to exculpate himself, thus to have witnesses testify on his behalf, RT. Pg. 41-43. This constitutional defense was presented at the appellate level on Appellant Opening Brief, Pg. 8-11, with the followings authorities, United States v. MaclosKey (1982) 682 F. 2d. 479, U.S. v. Kirzewski (1989) 877 F. 2d. 210, 215-216, Brady and It's prognosis, People v. Reeder (1978) 82 Cal. App. 3d. 543., etc., Chambers v. Mississippi (1973) 410 U.S. 284, 35 L. Ed. 2d. 297, 298, 299, 93 S. Ct. 1038, CAFADD1-CR: Pet. For Cert. Pg. 1-8, SCSC-CR: Pet. For Cert. Pg. 2-5. App. Pg. 1-8;

At the Appellate level in the Superior Court, County of Solano, respondent's brief was untimely, fabricated with intent to convict an innocent preson. The Court takes the position that it properly granted time to file it, See. Pg. 23, infra.

REASONS FOR GRANTING CERTIORARI

The Demurrer Motion is Sufficient

Here, petitioner was acting in the protection of his family property, after having requested public assistance, who failed in protecting said property. The majority of the courts recognize (t)his extraordinary and exculpatory circumstances defense. Alard v. Vanier (1958) 50 C. 2d. 617, 618, 621. California Constitution Art. I, Sec. I. People v. Jackson (1991) 235 Cal. App. 3d. 1670, 1677-1678. Was petitioner's conduct justified upon the findings of imminent dangers at his family property (App. Pg. 25-28), Evidence Code Section 669(b)(1). Penal Code Section 1004(5)? As this Court said in Chambers v. Mississippi (1973) 35 L. Ed. 2d. 297, 311-312, with errors of exculpatory evidence, the reviewing Court examines the record as if the evidence had been

properly received and decides whether that evidence would have affected the verdict/judgement. It is a reversible error to exclude exculpatory evidence that may have had an effect on the outcome of the trial, or that could in any reasonable likelihood have affected the judgment of the jury. Id., 799-800. (MCSC: RT. Pg. 38)-(ADSCCS. CR: APP.OPP. BRIEF, Pg. 8-12).

Nevertheless, petitioner, finding his speed at 45MPH and reducing it to 35MPH, presents the issue of lack of criminal intent. Penal Code Section 26 Three. Moreover, this speed of 35MPH is not justified by law (Vehicle Code Section 627(a)(b)(1)). The excluded evidence, "survey" finds the prevailing speed to be 45MPH-48MPH Vehicle Code Section 627(a)(b)(1). Thus, the facts stated do not constitute a public

offense. Penal Code Section 1004(4). Evidence Code Section 210, 410. 602-607. Patterson v. McLean Credit Union (1988) 99 L. Ed. 2d. 879, 880C-880D.

Thomson v. Luisville (1960) 4 L. Ed. 2d. 654, 659, thus finding no evidence whatever in the record to support these convictions, is a sheer denial of due process. So is it a violation of due process to convict and punish a man without evidence of guilt?

Rights of the Accused

For the demurrer facts, the Court improperly denied petitioner's right to have witnesses in his own behalf. The exculpatory and pecuniary statement (App. Pg. 25-28) exposed petitioner to criminal liability as the officer corroborated. (RT. Pg. 12:17-18). Federal Rules of Evidence, Rule 804(b)(3). Moreover, the due process

clause of the Fourteenth Amendment guarantees the accused a fair trial. It gives him the right to put on evidence in his favor and to offer third-person confessions to exculpate himself. It forbids the State from acting, even in good faith, to deny him an opportunity to defend himself. Finally, as the case is, if there was any question about the truthfulness of the extra judicial statement, the witness for the defense was present in the courtroom and could have been put under oath and cross-examined by the State. Chambers v. Mississippi (1973) 35 L. Ed. 2d. 312-313, 799-800.

Improprieties at his Arraignment Default

The Court departs from procedure of due process in declining to receive defendant's demurrer papers on his arraignment day, "March 2, 1993" (App. Pg. 24-33). The fact that said Court

ordered defendant to plead and sit down, that it didn't need to see petitioner's papers was a rude act of duress, without principles, denying petitioner due process rights to demur to the complaint at his arraignment. Penal Code Section 1003-1006. People v. Gilbert (1944) 154 P. 2d. 657, 666. Petitioner shall not be looked at with indifference for the application of those statutes. Patterson v. McLean Credit Union (1988) 99 L. Ed. 2d. 879, 880C-880D. For the reasons stated above, on March 3, 1993, petitioner interpose the proceedings with his demurrer motion, the hearing date was set for March 17, 1993, and respondent, having failed to make any opposition to the demurrer motion, thus leaving the facts of the demurrer undisputed, petitioner was then entitled to an order on his demurrer motion. 5 Witkin California Procedure 2d. Ed. Pg.

3857, Section (2)(80), California Rules of Court, Rule 317(a). As the Court said, "Where the facts are undisputed and the law establishes the right of a party to an order of the relief which the Court has refused, the writ stands". Penal Code Section 1002-1006. Moreover, this raised an issue of procedure default. The Court in transferring the case to another courtroom for trial, acted in excess of its jurisdiction. Penal Code Section 1006. 5 Witkin California Procedure 2d. Ed. Pg. 3858, Section (b)(1)(83), jurisdiction of the subject matter.

Thus the Court's discretion to enter judgment in favor of the prosecution over petitioner's objection to the proceeding on March 29, 1993 App. Pg. 6), on the grounds that the motion was not timely, fails to recognize the facts of March 2, 1993, petitioner's

arraignment date.

Nevertheless, said opinion conflicts with the State Supreme Court Ruling, People v. Jennings (1991) 53 C. 3d. 334-335, which permits the defendant to demur to the pleading at any time prior to trial. People v. Polowicz (1992) 5 Cal. App. 4th. 1094-1095. See relief from default granted on wholly inadequate showing; abuse of discretion illustration. 5 Witkin Cal. Procedure 2d. Ed. Pg. 3857, (2)(80), Pg. 3858, Section (b)(1)(83). Divorin v. Superior Court (1974) 15 C. 3d. 648, People v. Cook (1977) 68 Cal. App. 3d. 806-807.

12 Cal. Jur. 3d. Certiorari Sec. 15. California Rule of Court, Rule 317(a). Cal. Stats 1986, Ch. 246, Sec. 1. Solano County Local Rule, Rule 4.14(a). Code of Civil Procedure Section 1005. As this Court said, in Patterson v. McLean Credit Union (1988) 99 L. Ed.

2d. 879, 880C, 880D. We do not believe that the court may recognize any such exceptions to the abiding rule that it treat all litigants equally.

Speed Trap No Evidence

Petitioner was convicted in the Municipal Court of Solano County, with competent jurisdiction over traffic matters, "except were the evidence gathered is in violation of Vehicle Code Section 627(a)(b)(1), 22350 40802(b)(1)(2)(3)". Where the evidence is gathered in violation of this law, the court loses its jurisdiction, Section 40805. People v. Gaulet (1993) 13 Cal. App. 4th. Supp. 1, 5, 6, 7.

This law makes prima facie evidence of the facts and speed limits on Elmira Road, which said Survey finds the speed of 35MPH to be the minimum speed and the maximum is of 45-48MPH. Cal. Const. Art. I, Sec. 28(d);

Thus the Court fails to recognize defendant's extraordinary and exculpatory defense--that before Shasta he had reduced his speed from 45MPH to 35MPH and continued at 35MPH for about a mile and a half and encountered a yellow interval signal where he stopped and waited for the signal to return to green. Evidence Code Section 669(b)(1), Penal Code Section 26 Three, 1004(4), the Survey (CAFADD1: CR-SURVEY) speaks for its self and rebuts the presumption of the State's alleged violation of the speed limit, Evidence Code Section 210, 410, 602-607, 1280. Demurrer Motion, (App. Pg. 28-29). Federal Rule of Evidence, Rule 401, 803(8), 28 USCS 1733(a)(b). United States v. Nobles (1974) 422 U. S. 225, 230-231. To this end, we have placed our confidence in the adversary system, entrusting to it

the primary responsibility for developing relevant facts on which a determination of guilt or innocence can be made. Kaiser v. Industrial Acc. Com. (1952) 109 Cal. App. 2d. 54, 58.

Moreover, the prosecution shall prove its case beyond a reasonable doubt as to the existence of the presumed fact of 35MPH. Penal Code Section 1096, United States v. Cambell (1991) 777 F. Supp. 1259, 1262. This means that a mere modicum of evidence may satisfy a "no evidence" standard. United States Constitution Amendments V and XIV. See Vehicle Code Section 22350 for its relevance to the "survey" and satisfied no violation:

Elmira Road does not provide access to abutting residential property, width of 90 feet, more than one-half mile of uninterrupted length as defined under

Section 445, with two traffic lanes for each direction, a middle yellow divider width of about 5 feet. The survey speaks for itself (CAFADD1 CR-SURVEY). Cal. Vehicle Code Section 40802(b)(1)(2)(3).

In, Arizona v. Fulminante (1991) 111 S. Ct. 1246, this court cataloged the many constitutional errors to which harmless error analysis applies, noting the common tread in the cases is that each involved "trial error" which can be assessed in light of the entirety of the evidence. Id., 1263-1264.

Prosecution Suppression of Evidence

At petitioner's demurrer motion (App. Pg. 24, 30-33) it was alternatively requested that the prosecution produce said evidence, "engineering and traffic survey," the prosecution having failed to produce said rebuttal evidence

as alternative subpoena duces tecum in his demurrer motion. Thus, the prosecution is deemed to have acted in bad faith and in reckless disregard for the truth of the charges. People v. Jackson (1991) 235 Cal. App. 3d. 1670, 1678-79. Cal. Penal Code Section 1054.5. United States v. Agurs (1976) 49 L. Ed. 2d. 342, 353-354.

After his Oath, March 29, 1993, RT.

As stated above, the Court fails to recognize defendant's exculpatory defense, that before he reached Shasta Drive, he had reduce his speed of 45MPH to 35MPH and continued at 35MPH for about a mile and one-half, whereupon he encountered a yellow interval signal, at which point he stopped and waited for the signal to turn to green (App. Pg. 29-30).

//

The opinion (App. Pg. 2-3) finds defendant guilty for exceeding the speed limit and conditions which made is unsafe to do so; namely, other traffic, and more important, the wet roadway and you were traveling in street at freeway speeds. Is it proper to convict and punish a man on speculative fabricated and perjured testimony?

State's witness statements under oath, Reporters Transcripts, March 29, 1993. (RT. Pg. 11:13-17) "At that time I caught up to the vehicle somewhat and turned on my emergency lights, and the vehicle yielded to the right side of the road in front of 1011 Masson Street. At that time I contacted the driver of the vehicle". The disclosed testimony demonstrates that the State's witness included perjured testimony. Cal. Penal Code Section 123, 125, 128, 134. United

States v. Agurs (1976) 49 L. Ed. 2d. 342, 349.

Here the officer concealed the fact that at the time he approached petitioner's vehicle, petitioner was waiting for the interval signal of Peabody and Elmira Road, to turn to green; that he also stopped and waited at said intersection and was there after that the officer arrested petitioner, where petitioner was proceeding from the interval signal at a speed of 15MPH, not at a freeway speed.

Does the procedure question hereunder and (App. Pg. 36-39) develop a non-existence or a fatal variance in the State's witness's testimony supra (Pg. 21, Ph. 2)?

(RT. Pg. 35:3-24, (Q). What were we doing at the intersection of Peabody Road and Elmira. Were you at a dead stop at that intersection. (A). I don't

recall. (Q). You don't recall. Would you say that after that intersection, that I was doing 50 miles per hour as you allege. (A) I don't recall. (Q). You don't recall. Do you recall everything you stopped me on Masson Street, right. (A). Yes. (Q). And that intersection has traffic signal lights, correct. (A). Yes. (Q). And I had stopped at that intersection for the red light; is that correct. (A). I don't remember. Cal. Penal Code Section 14. Thus procuring the conviction of an innocent person. See, California Evidence Code Section 606-607.

The prosecution having found these facts and the lack of probable cause, in their belated appellate brief (Pg. 1:18-24, Pg. 2:1-3) intentionally and falsely and materially alleged that the officer had arrested petitioner at

COURT OF APPEALS OF THE STATE OF
CALIFORNIA IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION: 1

JUAN BAUTISTA RIVERA

v.

SOLANO COUNTY SUPERIOR COURT

THE PEOPLE.

A 064215

Solano Muni. No. F572872

BY THE COURT:

The petition for Writ of Certiorari is denied.

Dated: JAN 12 1994

STRANKMAN, P.J.

First Appellate District, Division One

S037694

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

JUAN BAUTISTA RIVERA, Petitioner

v.

Supreme Court

FILED MAR 23 1994

Robert Wandruff Clerk

SOLANO COUNTY SUPERIOR COURT, Respondent

THE PEOPLE, Real Party In Interest

Petition for review DENIED.

LUCAS

Cheif Justice

Petitioner, finding that no pleading had been made by the respondent, petitioner made an evidence annotation on the seal of the Superior Court Clerk of Records, dated June 1, 1993, (Appellant's Opening Brief) as last record found, as of June 21, 1993, sic, reveling the 21 day of June 1993, as last day of petitioner reviewing the record (App. Pg. 34).

On July 13, 1993, the Court issued a memorandum, that due to the Court's availability, please be advised that the hearing on the en banc appeal scheduled for Friday, December 17, 1993, has been advanced to Friday, October 15, 1993.

For the reasons stated above, on July 22, 1993, petitioner filed an objection, pursuant to California Rule of Court, Rule 105, failure to file respondents brief, within 20 days from June 1, 1993. (ADSC: CR).

As astonishing as it is and as astonishing as it may seem to you, on April 7, 1994, as I went to the clerk's office, requesting a printout of the docket sheet of the Appellate Department of the Superior Court, the presiding Clerk (Ann Griffith) advised me to see the record and make annotations thereof. At this time the astonishing fabrication of (t)his record captioned Application for Enlargement of time dated June 16, 1993, was discovered, Penal Code Section 132, 134, preparing false evidence.

Moreover, the novel here set's to impeache the opinion of the Court that it properly granted respondent enlargement of time to file their brief.

Nevertheless, said order dated June 16, 1993 (App. Pg. 35), was not in the Clerk Records on June 21, 1993, as stated above. Moreover this order and the pleading does not have a Proof of

Service attached hereto. This in Cf. Dobrick v. Hataway (1984) 160 Cal. App. 3d. 914, 921-922, lacks the court of its jurisdiction. Proof of Service is an strict requirement under the law. California Code of Civil Procedure Section 1013, 1013(a).

CONCLUSION

For the foregoing reasonsreasons and after consideration of the papers distributed pursuant to this Court rule, a Writ of Certiorari should be summarily issue directing the respondent's to the Constitutional due process right's of the defendant, to be treated with indifference for the application of law and facts in his defense throughout the proceedings.

The State to use their responsive powers to impeach their own witnesses.

Prosecution not to prosecuted upon knowingly falsely fabricated material thus contriving defendant's due process right's.

To protect defendant's due process right's to have witnesses in his behalf to support his extraordinary and exculpatory circumstances. To have the prosecution produce evidence favored to the defense upon his request although that it impeaches the State's alleged violation or charges and to admit it at his trail as his exculpatory and rebutal defense, pursuant to his constitutional right's to the truth in evidence.

To review petitioner Constitutional right's to protect his family property.

Dated: June ~~10~~, 1994

Respectfully Submitted

Juan Bautista Rivera

Petitioner on his Own

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THE PEOPLE OF THE STATE OF CALIFORNIA

PLAINTIFFS,

F572872TR

vs.

JUAN BAUTISTA RIVERA

STATEMENT OF COURT MARCH 29, 1993

Page 50-52 of the Reporter Transcript's

The Court. All right. anythin else that you what to say, Mr. Rivera?

Mr. Rivera: I have submitted the evidence. Again, my conclusion to this case is that the engineering and traffic survey has been shown, and it has no - the minimum speed limit in that section is 35 miles per hour.

Stated in the traffic engineering survey, it states up to 48, 45, 48 miles per hour. Also, I would believe this case is in 40802, defining a speed trap.

In the case of People v. Munos, it has also cited section 40808, and I have read that section, and if I'm reading correctly, --

The Court: well, se those deal with speed traps and radar cases, and there has been a lot of changes there because of the passage of proposition 8 which require all relevant evidence be admitted, but the bottom line is this was neither a speed trap or radar stop, okay?

Mr. Rivera: Section four defines -

The Court: Okay. well, I'm familiar with those cases and both sections, and both are not applicable, is so the matter submitted.

The Court: Okay. I do find you guilty of the violation, Mr. Rivera. It appears rather obvious that you were exceeding the speed limit and conditions

which made it unsafe to do so; namely other traffic, and more importantly, the wet roadway and you were traveling in the street at freway speeds.

The fine is $91. to that they add a $10 DMV fee and a $10 O.R. fee. If you can pay these witin a week, I do have to add $20 time payment fee. Can you?

Mr. Rivera: Your honor, is it posible since I believe that this case would go to an appeal, is it possible that I could take traffic school.

The Court: No. That is not possible, so can you pay within a week of today or not?

Mr. Rivera: I have the case that says it is possible, but I would take that into appeal; and yes I will submit the bail.

The Court: Can you pay within a week and a day? That is my question.

The Defendant: Yes, I will. How

much is bail?

The Court: It is $91 on the fine, a $10 O.P. fee and a $10 DMV fee. It's $111. Are you going to pay that today?

The defendant: No. I do not have that kind of money with me today. Is it posible to pay the bail on this case?

The Court: No. if you are successful up there, we will just go ahead and refund it to you, okay? So the bailif will tell you where to pay that.

Mr. Rivera: Excuse me.

The Court: The baliff will tell you where to pay that.

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF SOLANO APPELLATE
DEPARTMENT

People of the
State of California

CASE NO. C34881

Plaintiff/Respondent

vs. OPINION ON APPEAL

Juan Bautista Rivera (Muni No. F572872)

Defendant/Appellant

On Appeal, the Defendant seems to raise the following issues: (1) his due process right were violated when the commissioner and the trial judge denied him the right to file a demurrer; (2) the trial judge erred when the offer of "speed trap" evidence was not allowed

during trial; (3) the appellate Court improperly granted the People an extension of time for filing their responsive papers; and (4) the defense of necessity precludes his conviction for speeding violation.

DISCUSION

The defendant's demurrer motion was properly denied for a number of reasons. First, the Defendant entered a plea of not guilty on March 2, 1993. His demurrer was filed March 3, 1993. Therefore, his demurrer was not timely (Penal Code Section 1002-1005). Second, the demurrer filed did not raise issues to which a demurrer speaks. Therefore, had it been filed in a timely fashion, it would have been denied on its merits.

The trial court properly denied the offer of "speed trap" evidence. The case presented by the People did not rely on

the type of evidence which would make relevant either the issue of "speed trap" evidence ot the issue of the existence of a traffic and engeneering survey (Vehicle Code Section 40802).

This Court properly granted an extention to the people to file its opening brief. Good cause was shown by the people to do so and this Court did not abuse its discretion in granting the requested extention.

Finally, on the issue of the defense of necessity, the Defendant failed to lay the proper foundation for the consideration of such a defense. This defense does not apply when there is a reasonable legal alternative to violating the law (People v. Morris (1987) 191 Cal App. 3d. Supp. 8).

The Judgement of the conviction if affirmed. The case is remanded to the Municipal Court for further proceedings.

Dated: November 30, 1993

R. MICHAEL SMITH

Presiding Judge of the Appellate Department

We concur.

RICHARD M. HARRIS

Judge of the Superior Court

DENNIS BUNTING

Judge of the Superior Court

JUAN BAUTISTA RIVERA

1133 BEELARD, DR.

VACAVILLE, CAL. 95687

TEL. 1-707-452-9728

DEFENDANT APPELLANT IN PRO PER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SOLANO APPELLATE DEPARTMENT

PEOPLE OF THE STATE OF CALIFORNIA

PLAINTIFF & RESPONDENTS

vs.

JUAN BAUTISTA RIVERA

DEFENDANT AND APPELLANT/

CASE: NO. C34881

M. Ct. F572872

PETITION FOR REHEARING AND APPLICATION FOR CERTIFICATION

Pursuant to California Rules of Court 107, Appellant petitions this Honorable Court for Rehearing of the above entitle matter. Alternatively, Appellant request that this matter be certified for transfer to the Court of Appeals pursuant to California Rules of Court 62 and 63.

I

CONFLICT OF LAWS AND FACTS

THE COURT'S OPINION FAILS TO RECONCILE THE FACTO STATED ON THE STATUTE OF CALIFORNIA VEHICLE CODE SECTION 40802(b)(1)(2)(3), THESE ARE FACTS WHICH ARE ADVERSE TO THE PEOPLE; RULES OF PROFETIONAL CONDUCT, RULE 5-200(B).

On December 6, 1993, this court's opinion in the present matter on the issue here presented that the trial judge properly denied the offer of "speed trap" evidence.

The case presented by the people did not rely on the type of evidence which would make relevant either the issue of "speed trap" evidence or the issue of the existence of a traffic and engineering survey (Vehicle Code Section 40802). (Opinion, Pg. 2, lines 10-16).

Appellant respectfully submits that the court has affected substantial rights of the appellant during the examination of the brief's, which direct contravene his due process right's. (Appellant Opening Brief, Pg. 7 to 9, ine 1-23).

In view of these facts, it cannot be concluded, as the court's does here, that the court properly denied the offer of "speed trap" evidence or the issue of the existence of a Traffic and Engeneering Survey. People v. Gaulet (1992) 13 Cal. App. 4th. Supp. 1, 5, 6,

7. Vehicle Code Section 627(a), thus the "Prevailing Speed as determined by the traffic engeneering measurements" with these guidelines in mind, California Penal Code Section 1096, the conviction of appellant is in excess of the court's jurisdiction and not with in the Law.

II

THIS COURT SHOULD CERTIFY THE PRESENT CASE FOR TRANSFER TO THE COURT OF APPEALS IN ORDER TO SETTLE THESE IMPORTANT QUESTION OF LAW

In the event that within petition for rehearing is denied, it is appellant position that this case meets the criteria for certification to the Court of Appeals, pursuant to California Rule of Court, 62 and 63, Penal Code Section 1471. The hodings here embodies an "important question of law" within the

meaning of these rules. In that decides a question of first impresion in California "Speed trap laws" California Vehicle Code Section 40802(b)(1)(2)(3) and further involves a factual situation likely to be the subject of persistent litigation in the future.

Therefore, we should settle, whether Section 40802(b)(1)(2)(3) is only applicable on the issue of radar use only and whether Elmira Road is a local Street or Road as defined under Section 40802(b)(1)(2)(3).

As decided in People v. Gaulet (1992) 13 Cal App. 4th. Supp. 1, 5, 6, 7, these sections do not say that they apply only enforsement is exclusively based on the use of radar. Section 40802(b) definesa "speed trap" as a particular section of a highway with prima facie limit provided by this code

or by ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Section 22354, 22357, 22358, or 22358.3, which speed limit is not justefied by an engeneering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar of other electronin devices which measure the speed of moving objects. This subdivision does not apply to local streets and roads.

For purposes of this section, local streets and roads shall be defined by the latest functional usage and federal aid system maps as submitted to the Federal Highway Administration. When these maps have not been submitted, the following definitions shall be used: A local street or road primary provides

access to abunting residential property and shall meet the following three conditions: (1) Road wodth of no more than 40 feet. (2) Not more than one-half uninterrupted length. Interruptions shall include official traffic devices as defined in section 445. (3) Not more than one lane in each direction. This engeneering survey (Exhibit One hereto, Pg. 2 to 10, makes Elmira Road not a local Road or Street).

Having considered these questions of law and facts, then we shall blow to the Constitutional question whether petitioner is entitle to a fear trial by presenting all relevant evidence of significant provative value to his defense. Nevertheless, this "exhibit" must be released by the prosecution on presentation of satisfactory evidence that the speed posted was justified by

the engeneering and traffic survey measurements. People v. Flaxman (1977) 74 Cal. App. 3d. Supp. 16, admissible to the defendants defense as matter of law, California Evidence Code Section 1280, California Constitution Art. I, Section 28(d), People v. Reeder (1978) 82 Cal. App. 3d. 543, the due process right of the defendant to fair trial and his right to present all relevant evidence of significant provative value to his defense. California Penal Code Section 1096.

Moreover, this Court's opinion in the present matter states that the defense of necessity does not apply and that appellant demurrer was not timely filed. (Opinion, Pg. 2, lines 1-10, 20-26). Nevetheless, althought that the legal alternative was requested, said legal alternative did not avail the to

enter the property wich appellant was secking protection, leving the property at high risk of danger. Wherefore we shall settle the question whether defendants demurrer was timely filed and whether the court below, applied the proper standar in the conflicting decissions of People v. Lucero (1988) 203 Cal. App. 3d. 1011, 1012, Actus Deinemni est damnosus, and People v.Jennings (1991) 53 C. 3d. 334, 335, People v Polowicz (1992) 5 Cal. App. 4th. 1085, 1095, pertmitting the defendant to demur to the pleading prior to trial. Furthermore, where the facts are undisputed the law establishes the party to an order. Witkin 2d. Extraordinary Writs, Pg. 3857, Section (2)(80).

CONCLUSION

For the foregoing reasons and upon recognition of these facts, Appellant

and Petitioner Prays that this Court grands a rehearing and that since this court had remanded this matter for further proceedings, and has not stated what proceedings are to take place in the lower court, it is further prayed that this court citation of People v. Morris, is not to charge petitioner on a crime that he has not commited, reckless, based on the corruptive stipulations of the officer at trial. Which may deprive petitioner of his liberty and health and wealth fear of him and his family.

Thus, California Constitution Art. VI, Section 10, the Court may make such comment on the evidence and the testimony and crediability of any witness. Alternatively that the instant case be certified for transfer to the court of Appeals.

Dated: December 10, 1993.

Respectfully Submitted

Juan Bautista Rivera,

Petitioner

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF SOLANO APPELLATE
DEPARTMENT

People of the
State of California

Case # C34881

Plaintff/ Respondents MC: # F572872

vs. Order Denying
Rehearing and
Juan Bautista Rivera And Application
For Certification

Defendant/Appellant

_____/

TO THE APPELLANT AND/OR HIS COUNSEL
OF RECORD:

The Court, having reviewed and considered Appellant's Petition for Rehearing and Application for certification filed December 13, 1993, HEREBY ORDERS AS FOLLOWS:

Petitioner's Application for Rehearing is denied. Petitioner's Application for Certification to the Court of Appeal is denied.

Dated: December 20, 1993

R. Michael Smith

Presiding Judge of the Appellate Department.

Shasta street, this being contrary to the State's witness who alleges that he arrested petitioner at 1011 Masson street, ante. United States v. Kelly (1982) 543 F. Supp. 1303, deliberate use of false testimony by the prosecutor's violates defendant's due process. Penal Code Section 123, 125, 128, 129, 134. Sic, due process is a shield against this type of deceptive treatment. United States Constitution Amendments V and XIV. California Rules of Professional Conduct, Rule 5-200(b).

Was it proper for petitioner to ask theatrical test questions to impeach the state's witness (App. Pg. 36-39)?

Thus, like this court said, in Thomson v. Luisville (1960) 4 L. Ed. 2d. 654, 659, thus, finding no evidence whatever in the record to support these convictions is a sheer denial of due

process, so is it a violation of due process to convict and punish a man without evidence of guilt? Which means that mere modicum of evidence may satisfy a "no evidence" standard. United States v. Cambell (1991) 777 Fed. Supp. 1259, 1262.

Appellate Procedure

As ordered by the Appellate Department of the Superior Court on May 11, 1993, petitioner on June 1, 1993, filed his opening brief. The plaintiff's and respondent's brief were due on June 21, 1993. California Rule of Court, Rule 103, 105(a). Respondents, having failed to due diligent respond on June 21, 1993, petitioner went to the Superior Court Clerk's Office, to verify if the respondents had filed any respondent's brief or any other pleading.

JUAN BAUTISTA RIVERA
1133 BEELARD DRIVE
VACAVILLE. CA. 95687
1-707-452-9728

DEFENDANT IN PROPER

MUNICIPAL COURT OF CALIFORNIA
COUNTY OF SOLANO JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
CITY OF VACAVILLE COUNTY OF SOLANO
POLICE DEPARTMENT SERIAL # 245

No.: S-572872

PLAINTIFF

vs.

DEMURRER MOTION TO THE INFOR MATION INDICMENT OR COMPLAINT STANDARD CAL. PEN. C. SEC. 1004.5

JUAN BAUTISTA RIVERA

DEFENDANT

Dated: March 17, 1993
Deprt: 6
Time: 9:00 Am.

_____/

TO THE DISTRICT ATTORNEY AND TO THE HONORABLE COURT:

I. A DEFENDANT MAY CHALLENGE BY DEMURRER AN ACCUSATORY PLEADING ALLEGING MATTER WICH CONSTITUTE A LEGA BAR TO THE PROSECUTION

The defendant may demur to the accusatory pleading at arraignment, when it appears upon the face thereof either, California West Penal Code Section 1004. 5. That it contains matters which, if true would constitute a legal bar to the prosecution. See, 7 Witkin, Sum. Const. Law 9th Ed. Sec. 420, Pg. 602, Beazell v. Ohio 269 US 167, 70 L. Ed. 216, S. Ct. 68.

II. STATEMENT AGAINST THE DECLARANT INTEREST

In the Morning of January 16, 1993 in or about (1:33, Am.) defendant was informed that the place of (1519 Dover Avenue, City of San Pablo, State of California) had its alarm's going (on), these been "Fire and Burgle Alarms" the witness also informed the defendant that said witness vehicle had been move form where he had lefted park. The defendant

questioned the witness, if he could observe any broken windows, the answer was negative, and informed that the alarms are on, this urged de fendant necessity to assist accordantly to the information.

The findings at defendant's arivel to (1519) was that the police were all over the area of Dover Avenue and Rurill; Defendant entered the above location and found the "fire alarm" had received a signal thus causing it to go on, said signal appeared to be from the pilots of the furnaces that had gone off, thus causing gas odors like. See, People v. Jackson (1991) 235 Cal. App. 3d. 1670-78, Cal. Evidence Code Sec. 1230;

The Doctrine of imminent peril, 6 Witkin, Torts, 9th Ed. Sec. 757, the doctrine applies not only when a person

perceives danger to him self, but also when he perceives an imminent danger to others; and the mere appearance of imminent peril to others-not an actual imminent peril is all that is required.

This issue of the "fire and burgler alarms" was stipulated to the (Vacaville Police Department Officer Serial # 245) whom arrested defendant for about 15 minutes. Does this detention discharge the mandatory duty, not to place in peril the neighbor's and people which defendant was protecting.

Courts generaly recognize the "doctrine of necessity" as an affirmative defense on criminal charges as the one here.

This doctrine gives the court's the power to demurrer a complaint, indictment or information. In People v. Pena (1983) 149 Cal. App. 3d. Supp. 14,

21-22, 197 Cal Rptr. 265, the Court stated that, for the defense to be available an emergency has to arise without fault on part of the defendant, so imminent and compelling as to raise a reasonable expectation of harm either to the defendant or to these the defendant is protecting.

III. OBJECTION AS TO EXTRINSIC AMBIGUITYS

Furthermore, defendant have tested his vehicle to determine (t)his objection as extrinsic ambiguity found in said indictment, information or complaint, as heresay the information as to some prtion may so improbable as to be unwirthy and may uniquely tend to envoke an emotional bias against the defendant.

Defendant has found that parts of his vehicle speedometer were defective,

but having replace these, his vehicle driving on the up graded road, could not reach the alleged speed between Bellard and Allendale. See, City of Ballwin v. Collins, (1976) 534 S. W. 2d. 280, evaluading the officer speedometer calibration, against the defendant, Jerferson v. City of Anchorage, 374 P. 2d. 241, 243;

Moreover, on 1-15-93, there was no rain after (4:50, Pm) and it only rain for about 10 to 15 minutes that afternoon. Also the defendant explanatory annotation is that when he traveled trough Shasta, he was doing (35MPH); At this time he proceeded trough the road at (35MPH) in which about 3/4 of a mile from Shasta, encountered a Yellow signal where he Stop and waited until the signal turn Red and then Green.

Was here after that the officer issue a warrant for detention, this detention brings about the ex post facto law, Beasell v. Ohio, supra, any stattute which punishes a crime an act previosly committed which was innocent doe, which makes more burdersome the punishment for a crime after its commission, or which deprives the one charged with crime of any defense availeble according to law at the time when the act was committed, is prohibited as ex post facto;

See, People v. Stone (1987) 190 Cal. App. 3d. Supp. 1, 236 Cal. Rptr. 140. Visible traffic enforcement results in the prevention of traffic offenses rather thatn sumpli apprehending the offender an punishing him after the offense.

IV. SUBPOENA DUCES TECUM CALIFORNIA DEPARTMENT OF TRANSPORTATION, TRAFFIC

ENGENEERING SURVEY, SCENIC CORRIDOR, DENSITY LEVEL OF SERVICE, MEDIAN LINE, ROAD BED OF ELMIRA ROAD

The responsibilty for traffic control devices rest with a multitude of government jurisdiction. Traffic control devices placed and maintaned on all streets and highways in California are required by Section 21400 of the California Vehicle Code to comform to this Manual.

Under the authority granted by congress in 1966, the Secretary of transportation had decreed that traffic control devices on all streets and highways in each state shall be in substatial conformance with standards issued or endorsed by the Federal Highway Administration, This (1993) Manual comforms to that requirement.

V. ENGENEERING STUDY REQUIREMENT

The decision to use a particular device at particular location should be made on the basis of an engeneering study of the location. Thus, while this Manual provides standards for design and application of traffic control devices, it is not substitute for engeneering judgement. It is the intent that the provision of this Manual be standard for traffic control devices.

Moreover, in traffic survey's by the department of transportation and it's Traffic Manual, Ch. 4-02.4, whether using the Ball Bank Indicator or chart, downgrade curves that are borderlined should be signed, <u>while those on upgrade need not be</u>. It has been shown that a vehicle can sefly negotiate a turn at a higher speed on an up grade than on a downgrade. Notice that defendant was

driving on an up grade of the road and no curves present.

Dated: March 2, 1993

Respectfully Submitted

Juan Bautista Rivera

DEMURRER ORDER

The defendant has move this court for an order to demur the accusatory pleading, indictment or information, he has serve his points and Authorities in support of this motion. The demurrer motion is granted.

Dated: March 17, 1993

Judge of the Municipal Court

FILED
JUN - 1 1933
CHARLES D. RAMEY
Clerk of the Superior Court
By: DEPUTY CLERK

FORNIA

SUPERIOR COURT NUMBER C34881
MUNICIPAL COURT NUMBER F572872

IN THE SUPRERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SOALNO APPELLATE DEPRTMENT

PEOPLE OF THE STATE OF CALIFORNIA
CITY OF VACAVILLE COUNTY OF SOLANO
POLICE DEPARTMENT # 245.

PLAINTIFF AND RESPONDENTS

v.

JUAN BAUTISTA RIVERA

DEFENDANT AND APPELLANT

DEFENDANT AND APPELLANT OPENING BRIEF ON APPEAL FROM THE JUDGMENT OF MUNICIPAL COURT OF THE STATE OF CALIFORNIA, COUNTY OF SOLANO

JUAN BAUTISTA RIVERA
1133 BEELARD DR.
VACAVILLE, CA. 95687

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SOLANO

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiif/Respondents

v

Juan Bautista Rivera

Defendant/Appellant

_____/

CASE NO. C34881

MUNI CASE: F57 2872TR

ORDER

GOOD CAUSE APPEARING:, the foregoing application is granted. Respondents brief in this appeal shall be filed no later than july 30, 1993

//

Dated: June 16, 1993

Judge of the Superior Court

RT: March 29, 1993, Pg. 31:19-28, (Q). Officer, what was the traffic in the area like. (A). It was moderate. (Q). Moderate. Any traffic at all. (A). There was some. (q). How many vehicles do you figure that were there. (A). I don't recall how many. (Q). One, two, three. (A). I don't remember.

RT: Pg. 31:1-28. (Q). Say you have five. The Court: all right. he said he didn't recall. That mean's he doesn't remember.

By Mr. Rivera: (Q). It could have been that many. You don't remember it it was a lot of traffic.

The Court: Don't argue with him. Just ask another question, okay.

By Mr. Rivera:

(Q). Your attention to other traffic, did you have your, did you have your attention during the pace. You say

did you have your attention towards the traffic. (A). on the traffic that was around me, yes. (Q). You had your attention to that. how fast was that flow of traffic. (A). I don't know. (Q). You don't know. Did I pass any of these vehicles. Yes, you did. (Q). I did.

Mr. Rivera: I would object to it your honor. There was nothing but hearsay and speculation. There was no other traffic.

The COURT: It is not what some body else told him so your objection is overruled, and it's not speculation. He said he saw it. It was also your question so you are objecting to your own question.

Furthermore about the state witness, credibility, (RT. Pg. 38:2-4). (Q). How many pedestrians were in the area. MS. BLACK: Objection, ask and

answered. THE COURT: All right. he stated. THE WITNESS: I didn't understand the question. THE COURT: were there any pedestrians walking in the roadway. THE WITNESS: in the road way, no. THE COURT: Or in the area. THE WITNESS: Possible was. THE COURT: Don't argue with him. Your function is to ask questions. MR. RIVERA: officer, has a city engineering traffic survey been made. (A). Yes there was. (Q). Have you ever looked at this ----- traffic survey. (A). No. MS. BLACK: Objection, irrelevant. THE COURT: Sustained. MR. RIVERA: It is sort of conflict here.

RT. Pg. 40:6-9, THE COURT: all right. What was the weather conditions like that night. THE WITNESS: It was cloudy, previously rained. The pavement was wet.

RT: Pg. 40:20-28, MR. RIVERA Your Honor, could I make another question. THE COURT: Sure. (Q). You stated that there was rain on that day right. Do you remember about what time it was rained, the last drop on rain on that day. (A). No I don't. (Q). You have no Idea. The fact is you were working throughout the night, is that correct, that was the night shift. (A). Yes. (Q). About what time did you start working that day. (A). At 8:00 o'clock at night. (Q). Between 8:00 o'clock at night and 1:30 a.m. was there any rain. (A). I don't remember. THE COURT: all right. you do recall the roadway was wet. THE WITNESS: Yes I do. The road way was wet, yes.

This portion of the transcripts reveals extrinsic ambiguity's wanton of conviction, See, App. Pg. 24, 29-30.

STATUTORI AND REGULATORY PROVISIONS INVOLVED

California Vehicle Code Section 22350.

Basic Speed Law

No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of person or peoperty.

California Rules of Court,

Rule 317(a). time for Filing papers

(a) In general, Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 15 calendar days, all papers opposing the motion at least five cort days, and all reply papers at least two court days before

the time appointed for rehearing.

California Vehicle Code Section 627.

Engenering and Traffic Survey

(a) "Engineering and traffic survey" as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by the state and local authorities.

(b) An engineering and traffic survey shall include, among otherrequirements deemed necessary by the department, consideration of all of the following:

(1) Prevailing speeds as determined by traffic engineering measurements.

(2) Accident records.

(3) Highway, traffic, and roadside conditions not readily apparent to the driver.

California Vehicle Code Section 40802(b)
Speed Trap defined

A "speed trap" is either of the following:

(b) A particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Section 22354, 22357, 22358 or 22358.3, which speed limit is not justefied by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects. This subdivision does not apply to local streets and roads.

For purpose of this section, local

streets and roads shall be defined by the latest functional usage and federal-aid system maps as submitted to the Federal Administration. When these maps have not been submitted, the following definitions shall be used: A local street or road primarily provides access to abutting residential property and shall meet the following three conditions:

(1) Roadway width of not more than 40 feet.

(2) Not more than one-half mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Section 445.

(3) Not more than one traffic lane in each direction.

California Vehicle Code Section 40805.

Admission of speed trap evidence

Every court shall be without

jurisdiction to render a judgment of conviction agaginst any person for a violation of this code involving the speed of a vehicle if the court admits any evidence or testimony secured in violation of or which is inadmissible under this article.

California Vehicle Code Section 40808.

Effect of constitutional rights to truth in-evidence provision

Subdivision (d) of Section 28 of Article I of California Constitution shall not be constructed as abrogating the evidentiary provision of this article.

California Evidence Code Section 1280.

Record of public employee.

Evidence of writing made as a record of anm act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition or

event if:

(a) The writing was made by and within the scope of duty of public employee;

(b) The writing was made at or near the time of the act, condition or event; and (c) The sources of information and method and time of preparation were such as indicate its trustworthiness.

California Penal Code Section 1096. Presumption of innocence; effect; reasonable doubt

A defendant is a criminal action is presumed to be innocent until the contrary is proved, and in case of reasonable doubt whether his guilt is satisfactory shown, he is entitle to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him guilty beyound a reasonable doubt. Reasonable

doubt is defined as follows: "It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible imaginary doubt. It is that state of the case, which, after the entire comparation and consideration of all the evidence, leaves the minds of jurors in that condition that they can not say they feel an abiding conviction, to a moral certainty, of the truth of the charge".

California Penal Code Section 26 Three Persons capable of committing crime; exceptions

Person who committed the act or made the ommission charged under an ignorance or mistake of fact, which disproves any criminal intent.

California Penal Code Section 1002.

Pleading by defendant

Pleading on Part of Defendant. The only pleading on the part of the defendant is either a demurrer or a plea.

California Penal Code Section 1003.

Time for demurrer or plea

Demurrer or Plea, when put in. Both the demurrer and plea must be put in, in open Court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

California Penal Code Section 1004.

Demurrer; gounds

The defendant mau demur to the accusatory pleading at any time prior to the entry of a plea, when it appears upon the face thereof either.

4. That facts stated does not constitute a public offense.

5. That it contains matter which,

if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

California Penal Code Section 1005.

Demurrer; form; filing; specifications of grounds

The demurrer must be in writing, signed either by the defendant of his counsel, and filed. It must distinctly specify the gorunds of objection to the accusatory pleading or it must be disregarded.

California Penal Code Section 1006.

Demurrer; argument; continuance

Upon the demurrer been filed, the argument upon the objections presented thereby must be heard immediatly, unless for exceptional cause shown, the court shall grant a continuance. Such continuance shall be for no longer time

than the ends of justice require, and the court shall enter in its minuted the facts requirering it.

Appellate Rules, California Rule of Court, Rule 104 (a), Motions and oppositions, Except as otherwise provided in these rules all motions in reviewing court shall be made by filing of a typewritten motion, with proof of service an all other parties, stating the grounds of the motion, the papers, if any, on which it is bases, and the order or other relief requested. Each copy of the motion shall be accompanied by a memorandum of points and aothorities, and if the motion is based on matters not appearing of record by affidavits or other evidence in support thereof. Any showing in opposition to the motion shall be served and filed within 7 days after the filing of the

motion.

Appellate Rules, California Rule of Court, Rule 105(a) Time for filing, in Civil and criminal cases the appellant shall file an opening brief within 20 days after the filing of the record on appeal; the respondents shall file a brief within 20 days after the filing of appellant's opening brief, and the appellant may file a reply brief within 10 days after the filing of respondent's brief, but not later than the time for hearing. Any party may join another party or other parties in a brief or may adopt by reference any brief in the same or a companion case.

California Constitution Art. I, Section I. Inalienable rights.

Section 1. All people are by nature free and independent and have inalienable rights. Among these are

enjoying and defending life and liberty, acquiring, possessing, and protecting property, and persuing and obtaining safety, happiness, and privacy.

United States Constitution Amendment V; Section 1. Due Process of law. *** nor shall any state deprive any person of life, liberty, or property, without due process of law; ***

United States Constitution Amendment XIV- CITIZENSHIP: PRIVILEGES AND IMMUNITIES: DUE PROCESS; EQUAL PROTECTION;

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution Art. I, Section 28(d). Right to Truth-in Evidence Act. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, wheter heard in juvenile court or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to previlege or hearsay, or Evidence code Section 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.